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CMP. 2373 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-12-2024

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

CMP. 2373 of 2018

AND

SA SR. 70084 OF 2017

RAJU REDDIAR (DIED)

1. MRS. MALLIGA

APPELLANT(S)

Vs

MR. R. PARANTHMAN
AND 8 OTHERS

RESPONDENT(S)

For Appellant(s):

Mr. M.K.KABIR,
SENIOR ADVOCATE FOR
Mr.T.JAYARAMAN

For Respondent(s):

M/S.K.S.MADHAVAN
FOR RR1 TO 3
NO APPEARANCE FOR RR4, 6, 8 & 9

ORDER

This Civil Miscellaneous Petition has been filed seeking to condone the delay of 1128 days in filing the above Second Appeal against the judgment and decree dated 21.03.2014 passed in A.S.No.443 of 2011, on the file of III Addl. Judge, City Civil Court, Chennai setting aside the judgment and decree passed in O.S.No.1851 of 2007 dated 08.09.2011 on the file of VI



Asst. Judge, City Civil Court, Chennai.



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2. Mr.M.K.Kabir, learned senior counsel for petitioner submitted that because of the attitude of the counsels, who appeared on behalf of petitioner before the trial court as well as first appellate court, he could not get back the case papers from them in time and with the help of present counsel, he had applied for certified copy of judgment and decree. Immediately after getting papers during the first week of September 2017, he handed over papers to counsel on record, but after making it ready the appeal papers, by oversight he was not able to file the same within time and the second appeal was filed on 04.09.2017. Hence, there is a delay of 1128 days in filing the above second appeal arose, which is neither willful nor wanton. Therefore, he filed this petition to condone the delay in filing the above second appeal.

3. Mr.K.S.Madhavan, learned counsel for respondents 1 to 3 appeared and raised strong objections stating that the reason for the delay was not properly explained and the reason assigned by them is not sufficient. Furthermore, even as per their own affidavit, for more than 600 days, he has not taken steps to prefer the appeal even after getting the papers from the lower court counsel. Therefore, there is a negligence on their part and even in respect of giving complaint against lower court counsel, they have not produced any materials to show that they have taken steps before the Bar Council. Hence, he prayed to dismiss this petition.

4. By way of reply, the learned counsel for petitioner would submit that the petitioner has



lodged a complaint before the Bar Council for which, he has received a letter in the procedure for filing the complaint under Sec.35(1) of Advocates. So, he is not aware of the court proceedings as well as due to lack of communication, he has not filed the Second Appeal within a stipulated time.

5. On perusal of records, it reveals that the suit was filed for the relief of declaration by the plaintiff in the year of 2007 against his father and he is aged about 59 years and he being a senior citizen and from the year of 2007 onwards, he has approached the court, but he could not realise the fruits of the decree. Therefore, on considering the facts and circumstances and reasons stated by the petitioner in the affidavit seems to be justifiable one and to give one more opportunity, without prejudice to the objections raised by the learned counsel for respondents 1 to 3, this court is inclined to allow this petition on condition that the petitioner shall pay a cost of Rs.3000/- payable to the learned counsel for respondents 1 to 3 within a period of one week from the date of receipt of copy of this order. Registry is directed to number the Second Appeal if it is otherwise found to be in order and post the matter on 07.01.2025.

09-12-2024

RPP

N.B. : Issue order copy on 12.12.2024



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